

CIVILITY

AND PROFESSIONALISM IN THE PRACTICE OF LAW

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FLAGSTAFF ARIZONA



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Coconino County Courthouse

Winston Churchill

When declaring war on Japan, Churchill was roundly criticized in his own country for his unusually kind words used to address the Emperor of Japan:

His response:

“When you are about to kill a man, it costs you nothing more to be polite”.

Which of these characters demonstrates politeness?



Mr. Gerald Baker, Editor in Chief, Wall Street Journal:

Q: *“What would you change in Washington right now?”*

New Jersey Governor Chris Christie:

A. *“Well, the people, predominantly... Its about human relationships.*

*Nobody in this City talks to each other anymore.
Or if they do, they don't speak to each other civilly.
They don't develop relationships.
They don't develop any sense of trust between each other”.*

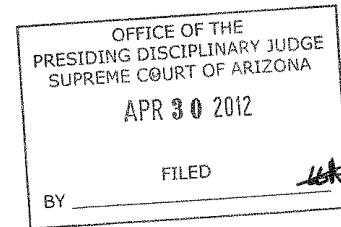
---Wall Street Journal, Monday November 25, 2013, p. R6



Is there any sense of trust and dignity in this deposition?



A DISTINCTLY UN-CIVIL AFFAIR



**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,**

MEYER L. ZIMAN,
Bar No. 002624,

Respondent.

PDJ-2011-9067

**REPORT AND ORDER IMPOSING
SANCTIONS**

Nos. 10-1394, 10-2329, 11-0130

On February 29, 2012 and March 1, 2012, the Hearing Panel ("Panel") composed of Jan Enderle, a public member from Maricopa County, James M. Marovich, an attorney member from Maricopa County, and the Presiding

I. SANCTION IMPOSED:

ATTORNEY SUSPENDED FOR ONE YEAR AND UPON REINSTATEMENT, TWO YEARS OF PROBATION WITH THE STATE BAR'S MEMBER ASSISTANCE PROGRAM ("MAP") AND LAW OFFICE MANAGEMENT ASSISTANCE PROGRAM ("LOMAP"), RESTITUTION AND COSTS.

II. PROCEDURAL HISTORY

The Probable Cause Order was filed on September 12, 2011 and the Complaint in this matter was filed on October 17, 2011 alleging violations of Rule 31(a)(2), Rule 41(g), ERs 1.5(c), 1.7, 1.7(a), 8.4(c), 8.4(d). On November 14, 2011, Respondent filed his Answer. An initial case management conference was held on November 1, 2011 and a final prehearing conference was held on February 1, 2012. The matter was then set for a two day evidentiary hearing.

Upon conclusion of the hearing on the merits, the PDJ ordered the parties' to submit closing arguments and proposed findings of fact and conclusions of law.

The parties filed their proposed facts and conclusions on April 6, 2012.

III. FINDINGS OF FACT

At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on September 26, 1970.

COUNT ONE (File No. 10-1394/Ruelas)

1. In or around June 2010, Respondent contacted Ms. Rascon and informed her that he had requested certain records but received records for his client "K. Jr." rather than "K. Sr."²

2. When Ms. Rascon asked Respondent to resubmit his request,

² See Exhibits 2 at Bates SBA000003, Exhibit 3 at Bates SBA000004; see also Exhibit 5 at Bates SBA000010-11, Exhibit 12 at Bates SBA000030, Answer, page 7-8, ¶ E - F

Relations With The Public

indicated that the records had been sent. Ms. Rascon reassured Respondent that if he re-submitted his request to her attention, she would ensure it reached Sonda Hudson for processing on Tuesday. Ms. Rascon stated that Respondent became frustrated and upset, said "this is bullshit, fuck, fuck, fuck" and then terminated the conversation by hanging up on her.

Ms. Hudson stated she initially "let it slide" did not say anything regarding his language, however the cursing continued. Ms. Hudson asked Respondent to refrain from cursing, as "he was speaking to a lady." Ms. Hudson testified that Respondent said "You are nothing but a slut that works for a copy service." Ms. Hudson testified that she asked him "I am a what!" and that he again referred to her as a slut and repeated the word slowly. Ms. Hudson ultimately hung up on Respondent. Ms. Hudson stated she is positive Respondent called her a slut. She has never had a problem in distinguishing words ending in "t" or "g".

Can You Hit Your Client?

24. On November 29, 2010, Respondent met with Complainants and explained that he had received three checks from Progressive Insurance - one for each Complainant and one for their daughter.³⁸

25. During the meeting, Respondent asked Complainants to sign the checks and explained how he would distribute the settlement funds.³⁹

26. During the November 29, 2010 meeting with Complainants, as the conversation deteriorated, Respondent attempted to hit Complainant-Miodrag, hit his binder, bit his own fists, and then escorted Complainants from his office stating: "I am done. Door is on the left side. Fucking people."⁴⁰ In essentially terminating them as clients, Respondent never informed them he considered his work completed and would still demand his percentage fee.

Mr. Jovic stated he did not authorize Respondent to settle the claims for the listed amounts in Exhibit 17. There was a fee dispute with Respondent. Mr. Jovic stated he was concerned because his property settlement was inadequate, his medical liens were not paid and he had not been compensated for lost wages. He had negotiated a more favorable property settlement by himself. At the meeting on November 29, 2010, Respondent was just asking for his money and did not have an accounting of the medical liens. Mr. Jovic said he would not sign the settlement checks without an accounting at which time, Respondent erupted, bit his own hands, tried to hit him with a binder, opened the conference room door and said "I am done; fucking people". Mr. Jovic acknowledged that during the conference call

Count III Needs No Words.

Warning: Explicit Content

VII. FINDINGS OF FACT

COUNT THREE (File No. 11-0130/DeJolie)

1. On or about January 6, 2011, Respondent called the North Scottsdale Ambulatory Surgery Center ("NSASC") and asked Cheryl Morrissey ("Morrissey"), a NSASC employee, to speak with Susan Weber ("Weber"), another NSASC employee, about medical records related to a personal injury case.⁴⁸

2. Morrissey stated Weber was out of the office and inquired whether Respondent would like to leave a message on Weber's voice-mail.⁴⁹

3. After several attempts to get Respondent to leave a message, Respondent then stated to Morrissey that he was getting so excited thinking about calling back the next day that "[he] just came all over [him]self."⁵⁰

4. At that time, Morrissey hung up the phone.⁵¹

5. On or about January 7, 2011, Respondent called NSASC.⁵²

6. Morrissey again answered the phone.⁵³

7. When Respondent identified himself at "Maurie Sieman", Morrissey attempted to transfer the call to Christopher DeJolie ("DeJolie"), a supervisor, but was unable to do so.⁵⁴

8. Respondent denies he identified himself as "Maurie Sieman" when he called the ambulatory service. The Panel finds he did so identify himself.

9. Respondent testified that he does not recall making the comment to Ms. Morrissey but at 67, it is physically impossible at his age to "come all over himself."

4. The Sanctioning of Plaintiff's Attorneys.

D & E requests that ABC's attorneys be sanctioned pursuant to A.R.S. sections 12-341.01(C), 349, 350, and Arizona Rules of Civil Appellate Procedure, Rule 25. We agree that the attorneys who filed this appeal should be sanctioned.

In the first place, Witasick filed a frivolous appeal....

It is also significant that Witasick was sanctioned \$1,500.00 by the arbitrator-two years and two appeals ago-in this very case. This prior sanction should have been a prior “lesson” from which Witasick learned something.

Many of the statements which defense counsel finds objectionable are not made in pleadings, but in letters from plaintiff's counsel to defense counsel. For example, the following statements to which defendants' attorney objects are contained in such letters:

(1) “To put it bluntly, Mr. Csontos you are completely bereft of any intellectual integrity whatsoever”; (2) “Assuming you are capable of reading basic English....”; (3) “I strongly suggest that you [Mr. Csontos] have a CAT scan run to confirm whether or not you are operating on all cylinders.”; (4) “Since I assume that you have no intention of growing up, and will continue pressing positions for which there is no legal support, evidently due to the fact that you have some sort of behavioral or personality disorder which mandates you taking frivolous positions....”

From: ABC Supply Inc., v. Edwards, 191 Ariz. 48, 53-54 (Ct.App., 1996)

Laddcapp Value Partners, LP v. Lowenstein Sandler, PC

New York Supreme Court, 609-2007

New York Law Journal Dec. 12, 2007

"This is not a white collar interview that you're sitting here interviewing something with your cute little thing going on," Decea said, according to the transcript, later telling her it was "nothing personal, dear."

After Rice told Decea she thought his comments were indeed personal and offensive, he said: "Your skin is getting thin now."

At another point in the deposition, Decea referred to Rice as "hon." After she questioned his use of the term, Ladd (the deponent) jumped in to suggest that Decea had meant Hun "[a]s in Attila" and that the remark was not personal.

"As in Attila? I don't even understand that," Rice replied.

Later in the deposition, Decea questioned Rice's ability to try the case.

"You better get somebody else here to try this case, otherwise you're going to be one sorry girl," he said.

- Rice went on to become a named partner at the white-collar defense boutique led by well-known litigator Stanley S. Arkin.
- A special referee was appointed a few days after the end of the depositions.
- Rice argued that Decea's conduct was intended to intimidate her and interfere with her advocacy in violation of New York's Code of Professional Responsibility.

THE PUBLIC LAWYER CONTEXT

In re: Alexander: 232 Ariz. 1 (2013)

Maintained a RICO lawsuit while knowing it lacked legal and factual merit, thereby violating duties she owed the public and the legal system.

- ER 3.1 Meritorious Claims. Informing oneself about the facts and applicable law and determine a good faith, non-frivolous argument can be made.

- ER 4.4. Respecting Rights of Others. Refrain from using means that have no substantial purpose other than to embarrass, delay, or burden another.

- ER 1.1. Competence. It is not basic negligence. A lawyer crosses the line between negligence and incompetence by failing to possess or acquire the knowledge and skill necessary for the representation, or by neglecting to investigate the facts and law as required to represent the client.

- ER 8.4. Misconduct. Engage in conduct that is prejudicial to the administration of Justice. The ER does not require a mental state other than negligence.

“Rachael Alexander impeded the administration of justice by demonstrating to all judges in Maricopa County that they risked having to defend against a civil damages lawsuit if they made rulings that displeased MCAO. We agree with the panel that Alexander violated ER 8.4(d) by maintaining the RICO suit against the defendant judges.” *In re: Alexander*, 232 Ariz. at ____, 300 P.3d 536, 547 (2013).

WHAT DO THESE CASES SHARE IN COMMON?

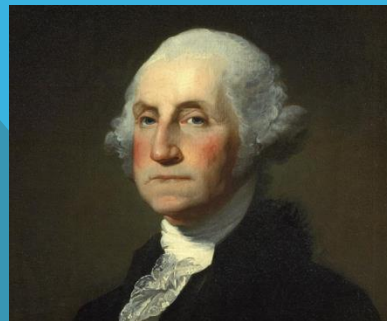
Mistaken Perspective



THE PERSPECTIVE OF SERVICE TO OTHERS

GEORGE WASHINGTON'S RULES OF
CIVILITY & DECENT BEHAVIOR
TAKEN FROM FRENCH JESUITS (1595)

- Every action done in company, ought to be done with some sign of respect to those that are present.
- Speak not when you should hold your peace.
- When you see crime punished you may be inwardly pleased; but always show pity to the suffering offender.
- Use no reproachful language against any one neither curse nor revile.
- Labor to keep alive in your breast that little spark of celestial fire called conscience.



ABRAHAM LINCOLN:

"RESOLVE TO BE HONEST AT ALL
EVENTS" - ADDRESS TO LAW
GRADUATES (1850).

It is not enough for an attorney to be honest. He must be *believed* to be honest. It is absolutely essential to the usefulness of an attorney that he be entitled to the confidence of his community where he practices...he must have prudence, and foresight, and tact and industry and courage. All these may exist in a *moderate* degree and he may be a useful member of the profession so long as the practice is to him a clean and honest function. -- Chief Justice Andrews, Connecticut Supreme Court (1891)



From Julie Braman Kane, *Civility: Its not a sign of weakness* (2012)

“Lawyers, whether or not engaged in the practice of law, should act honorably and treat others with courtesy and respect”.



Rule 41, Rules of the Supreme Court, *Comment* (2007).

Gregory Peck as Atticus Finch in *To Kill a Mockingbird*, 1962.

ARIZONA OATH OF ADMISSION

I, (state your name), do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Arizona;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding that shall appear to me to be without merit or to be unjust; I will not assert any defense except such as I honestly believe to be debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor; I will never seek to mislead the judge or jury by any misstatement or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client; I will accept no compensation in connection with my client's business except from my client or with my client's knowledge and approval;

I will abstain from all offensive conduct; I will not advance any fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

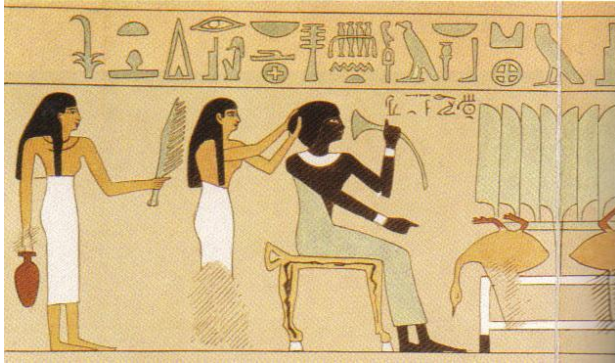
I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, **nor will I delay any person's cause for greed or malice;**

I will at all times faithfully and diligently adhere to the rules of professional responsibility and a lawyer's creed of professionalism of the State Bar of Arizona.



Premised upon the text of Rule 41, Rules of the Supreme Court

“[1] A lawyer, as a member of the legal profession, is a **representative** of clients, an **officer** of the legal system, and a **public citizen** having special responsibility For the quality of justice. Whether or not engaging in the practice of law, Lawyers should conduct themselves honorably.”



“[5] A lawyer’s conduct should conform to the requirements of the law, both in **professional service** to clients and the lawyer’s business and personal affairs. A lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for legal system and for those who serve it, including judges, Other lawyers and public officials.”

“[9]...These principles include the lawyer’s obligation to protect and pursue A client’s legitimate interests, within the bounds of the law, while acting honorably And maintaining a professional, courteous and **civil attitude** toward all persons Involved in the legal system”.



From: *Preamble*, Rule 42, Rules of the Supreme Court

Consider Yourself a Noble Servant



“Unprofessional conduct” means substantial or repeated violations of the Oath of Admission to the Bar

or

the Lawyer’s Creed of Professionalism of the State Bar of Arizona.”

Rule 31(a)(2)(E), Rules of Supreme Court.

“In taking the Oath of Admission to the Bar, lawyers swear that they will abstain from offensive conduct.

Respondent repeatedly and intentionally committed offensive conduct.
Respondent still does not accept that his conduct is offensive.*****

Lawyers should always strive to treat others with dignity and respect. Rude attacking comments reflect poorly on a self regulating profession.*****

While in his private life he may be as rude, offensive and demeaning as he chooses, in his professional life he may not hide behind his First Amendment rights to ignore his sworn responsibilities.”



In re: Meyer L. Ziman, Bar No. 002624
PDJ-2011-9096; Filed April 30, 2012.

WHY EMBRACE CIVILITY?

Makes work fun & healthy.



Reduces Stress/Raises Leadership.



“Do as they do in the law. Strive mightily,
but eat and drink as friends”.
– W. Shakespeare, *The Taming of the Shrew*
Act I, Scene 2.



CIVILITY TECHNIQUES

Sound Vision



Solid in sense of Self

Slow to Anger



Steadfastness

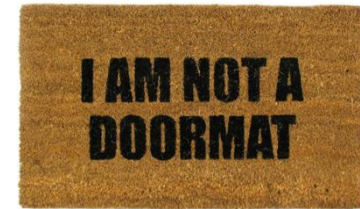
WHEN INCIVILITY STRIKES YOU

Think of Opportunities...



...Not Hardships.

Trust in the Law...



...and Persevere.



WHY EMBRACE CIVILITY?

IN-CIVILITY

- Sullies your reputation and your honor.
- Makes life miserable.
- Adds stress and makes the practice of law intolerable.
- Affects your health and your relationships in the office and at home.
- Increases your work load and the workload of the courts.
- Is much less effective in the end.
- Leads to motions, sanctions, and delayed justice.

CIVILITY

- Improves your standing in the profession and the greater community.
- Improves collegiality, is rewarding and healthy.
- Reduces stress and workloads.
- Produces better results, especially when matters are debatable.
- Takes the burden from the judiciary to set the tone for civility.
- Is a sure sign of genuine leadership.




SOME CIVILITY TECHNIQUES TO USE IN YOUR PRACTICE

1. Know your case. Understand what you are asked to do with it. Then:
2. Start every case with a phone call. To whom?
3. Early on, encourage voluntary compliance and mutual exchanges of material information.
4. Grant good faith extensions of time. But don't enable delay.
5. Organize disclosures and discovery before you send it.
6. Be complete (avoid "will supplement"). Give 'em everything you've got (unless it is privileged or subject to non-disclosure). Don't make opposing counsel have to ask twice.
7. Volunteer to arrange witness interviews and depositions. Take control of the calendar.
8. Conduct litigation in good faith.
9. Avoid unnecessary provocations, unnecessary witness lists, redundant trial exhibits, etc.
10. Never threaten, call names or be profane.
11. Don't show up late.
11. Don't ever hide the ball.
12. Object only in good faith and with reason.
13. Don't manufacture artificial inconsistencies as proof of a non-existent credibility problem.
14. Ask only what you need. Answer what is not objectionable.
15. Don't coach or vouch.
16. Notify opposing counsel of cancellations early.
17. Don't ever, without cause, attribute bad motive to opposing counsel.
18. Don't attribute to opposing counsel a position they have not taken.
19. If you supervise or are co-counsel, don't ask a person under your direction to engage in uncertain actions.
20. When drafting motions, read the cases. Avoid string citations that make the judge read voluminous material for no good reason.

Compiled from material of the American Board of Trial Advocates (2011)

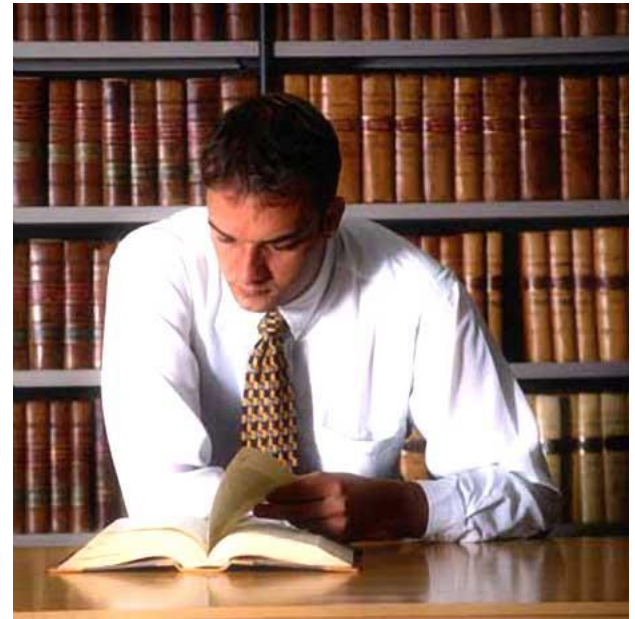
WHEN IN-CIVILITY STRIKES YOU

- Take a breath. Gain altitude and perspective. Recall you are a servant of justice, the courts, and your client's legitimate needs. Be a noble warrior.
 - Contact a supervisor. Many circumstances require it. Get a second opinion.
 - If it is a venomous letter or email. Consider meeting personally with opposing counsel. Don't reciprocate.
 - If you are a victim of hiding the ball. It can occur through concealment, negligent non-disclosure, intentionally misconstruing a request, or objections posed in bad-faith. Consider: (a) calling counsel to discuss mutual exchanges; (b) meet personally on scheduling and exchanges; (c) request personal inspections.
 - Don't return discourtesies and escalate the problem. There's nothing noble in that.
 - However, civility does not mean you are a door mat. Make a record. If the discourtesy is from a junior lawyer, contact the partner.
 - In trial, make courteous objections. Speak with patience. Avoid sinicism. Suffer your frustrations inwardly, not outwardly. If you must, approach the bench, explain, or request a recess to recompose.
 - If not in court, try to resolve disputes without first going to court. Going to court can be a gamble for both sides. Instead, be sure you have a real, and clear, disagreement that is not solvable. And then first seek alternatives.
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THE PERSPECTIVE IS ONE OF SERVICE



Honesty, Hard Work, Trust.
Confidence, Prudence, Learning.
Foresight, Industry, Professionalism.



RULE 1.1 COMPETENCE

“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

- Perhaps the most fundamental legal skill consists of determining what kind of legal problem the situation involves.
- Ascertain what's at stake; read the case correctly the first time.
 - Make Adequate and Thorough Preparation.

RULE 1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

- Pursue the matter despite opposition, obstruction or personal inconvenience.
 - Act with Commitment and Dedication.
 - Treat People with Courtesy and Respect.
- *These are the attributes of COURAGE, including tenacity and zeal ; but also NOT pressing for every possible advantage for the client.*

RULE 3.1 MERITORIOUS CLAIMS

(a) “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous,....”.

(c) The signature of an attorney constitutes a certificate by him that he has read the pleading, motion, or other court document; that to the best of his knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.”

RULE 3.3 CANDOR

A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose to the tribunal legal authority **in the controlling jurisdiction known to the lawyer to be** directly adverse to the position of the client and not disclosed by opposing counsel; **or**
- (3) offer evidence that the lawyer knows to be false. **If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.**

HONESTY, HARD WORK, TRUST

Confidence, Prudence, Learning, Foresight, Industry,
Professionalism.

